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# General concludes case against CBS

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NEW YORK — An attorney for Gen. William C. Westmoreland concluded his libel case against CBS yesterday with a pointed appeal to the jury. Just moments later, a CBS attorney began the network's case with his own entreaty to the jurors.

On the 45th day of testimony in a trial that is now 13 weeks old, Westmoreland attorney Dan Burt summed up the \$120 million libel suit with a tribute to the general's integrity. CBS attorney David Boies immediately followed with the opening of a defense that will last for several weeks.

"There was no suppression, no deception," Burt said, telling the jury that a 1982 CBS documentary said Westmoreland had "deliberately deceived his superiors about the size of the enemy in Vietnam." Burt told the jury to remember that 18 former military intelligence officers and government officials had testified on behalf of Westmoreland. The men, in sometimes vehement terms, generally supported Westmoreland's version of events.

"Eighteen men came from all over this country ... and subjected themselves to cross-examination to testify that they believe that Gen. Westmoreland did not deceive his superiors," Burt said. "Eighteen men took the time, risked their reputations and their dignity ... so that you could learn firsthand what had taken place."

Addressing the jury directly in one of the unique interim summations permitted both sides by the trial judge, Burt reminded the jurors of two 1967 military documents he had introduced. The jury has seen hundreds of pages of documents during testimony that has stretched over 6,481 transcript pages.

One document, Burt said, proved that one of the commanders whom the documentary said Westmoreland had deceived was in fact present at a Saigon meeting at which key intelligence reports were discussed. The second document, Burt said, refuted a key CBS allegation that Westmoreland had imposed an arbitrary "ceiling" of 300,000 on the number of enemy troops his intelligence officers could report.

"Remember, memory is fallible," Burt said. "... But documents don't lie."

Boies, passing Burt in front of the jury box, quickly reminded the jurors "of what Mr. Burt says about documents being forever and the fallibility of human memory."

Boies then rattled off a list of books, reference materials, interviews and a congressional investigation that CBS said it relied on in preparing *The Uncounted Enemy: A Vietnam Deception*. "I think there can be simply no doubt that the CBS people who put this broadcast together believe it was true and had awful good reason to believe it was true," Boies said.

Boies reminded the jurors that under libel law, Westmoreland must prove not only that the broadcast was false, but also "that CBS at the time that it did the broadcast believed it was false or was acting recklessly, disregarding whether it was true or false."

He went on: "CBS certainly wasn't disregarding whether it was true or false. It conducted 80 interviews, spent over a year, accumulated thousands of documents."

Boies also said Westmoreland's own witnesses had testified that the general had imposed a "command position" that estimates of enemy strength could not exceed 300,000. "You didn't hear that from a CBS witness," he said.

Westmoreland himself, Boies told the jury, had testified that his command position was "politically motivated, that they [Westmoreland and his commanders] were concerned about the political consequences."

Earlier, Burt offered as his final piece of evidence a letter written in June 1982 by George Crile, the producer of the documentary and a defendant in the suit.

Crile wrote to CBS correspondent Mike Wallace, another co-defendant, that he had dealt successfully with "the unusual and awkward relationship" posed by defendant Samuel A. Adams, a former CIA analyst who was a paid consultant for the broadcast.

Later, Boies read into the record sworn depositions by two witnesses: Joseph Zigman, an associate producer for the broadcast; and Dwain R. Gatterdam, a CIA analyst on Vietnam intelligence in 1968.

In his deposition, Zigman contradicted testimony Monday by former CBS film editor Ira Klein that Klein had complained to Zigman and Crile about serious flaws in the broadcast. "No one had ever complained to me about the way the show was being produced," Zigman testified. He added that Crile was "trustworthy, honest, a good reporter."

Gatterdam, who analyzed enemy strength in early 1968, said he concluded then that Westmoreland's command had underreported the size of the enemy by 150,000 to 200,000 men.

Gatterdam, who said Adams was a "thorough and meticulous" analyst, added that he believed Westmoreland's command had imposed an "arbitrary ceiling" on troop strength.

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